

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
319 State Office Building
Indianapolis, Indiana**

**STATE OF INDIANA)
COUNTY OF MARION)**

**GEORGE LUDDINGTON,
Complainant,**

DOCKET NO. 02854

vs.

**INDIANA BELL TELEPHONE
COMPANY, INCORPORATED,
Respondent.**

ORDER

This matter came before the Commission after objections to the recommendation of the Hearing Officer, Mr. William Marsh, were filed by Respondent pursuant to IC 4-22-1-14.

Arguments were heard by the Commission on September 23, 1976. Respondent was present by its counsel, Mr. Harold Folley and Complainant was present representing himself.

The primary matters upon which Respondent's objections are based are factual questions relating to the Respondent's intention. The Commission is reluctant to superimpose their judgment of the credibility of witnesses upon the hearing officer, since he was present during their testimony and could observe their demeanor.

Finding substantial evidence to support the hearing officer's recommendation the Commission hereby adopts the attached recommendation of the hearing officer as its own.

Complainant did concede, at the hearing on objections, that he was only entitled to be compensated for five (5) weeks rather than the seven (7) recommended by the hearing officer. The hearing officer's recommendation should therefore be modified to provide for five (5) weeks compensation.

With the exception of that modification, the Commission finds substantial evidence to support the recommendation of the Hearing Officer and in all other respects hereby adopts the attached recommendation as its own.

Signed: June 24, 1977

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**HEARING OFFICER'S
PROPOSED FINDINGS
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

The undersigned hearing officer held a hearing January 5 1976, to hear the complaint filed by Mr. George J. Luddington, filed on July 28, 1972, against the respondent Indiana Bell Telephone Company, Inc. The complainant appeared personally, without counsel; the respondent was represented by Harold L. Folley, Esq. During the course of the hearing the complainant offered exhibits 1, 3, 4, 5 and 6 and the respondent offered exhibits A and B. All offered exhibits were admitted into evidence without objection. Complainants exhibit 2 was not offered into evidence. The exhibits admitted into evidence are submitted to the Commission with this report. The hearing officer having studied the exhibits, heard the testimony of the witnesses, an observed the demeanor of the witnesses, herewith respectfully submits the proposed findings of fact, conclusions of law and recommended order for the consideration of this commission.

FINDINGS OF FACT

1. The complaint filed by the complainant alleges that the respondent was guilty of a discriminatory act on the basis of race on July 21, 1972

2. On the date of the alleged act of discrimination the complainant was employed as a switchman by the respondent in a work group referred to as the 101 ESS group.
3. The complainant was number 2 person on the seniority list in the work group.
4. In this work group the supervisor prepares a work schedule for each four week period. The work schedule lists the shifts which the supervisor offers for the upcoming four week period. The switchman in the group then bid on the offered shifts in order of seniority. The person with the greatest seniority bids his choice of the offered schedules, the second person on the seniority list bids his choice from the remaining shifts and so on down the seniority list until all offered tours of duty are bid.
5. Switchman employed by the respondent are paid premium pay for working night shifts and for working Sunday. A switchman working four or five nights in one week is paid a differential equal to 10% of his weekly pay. A switchman working nights and also on Sunday receives a pay differential of 20% of his weekly pay.
6. On the work schedule offered by the supervisor for the period of July 2 1972 to July 29, 1972, (Complainant's exhibit 1) the supervisor Barton offered a shift which worked from 4 P.M. until 12 midnight, Sunday through Thursday. The switchman who bid this shift would receive the premium pay for nights and the premium pay for Sunday. On this work schedule this shift was bid by John Matlock, the senior man in the work group. Matlock ordinarily worked day shifts but for this particular work schedule he bid this particular shift because of the greater pay and because he would be on vacation one week during the work schedule.
7. On the following work schedule, July 30, 1972 to August 26, 1972, (complainant's exhibit 3 and Respondent's exhibit B) the 4 P.M. to 12 A.M., Sunday through Thursday shift was not offered. The schedule was changed so that the 4 P.M. to 12 midnight tour on Sunday was added to a shift which otherwise worked from an 8 A.M. to 5 P.M. shift. This is the shift which was bid by T. Clidence on Complainant's Exhibit 3.
8. On the July 30 to August 26, 1972 work schedule, Matlock bid a 7 A.M. to 4 P.M. shift.

8. On the July 30 to August 26, 1972 work schedule, Matlock bid a 7 A.M. to 4 P.M. shift.
9. If the supervisor Barton had offered the 4 P.M. to 12 midnight, Sunday through Thursday on the July 30, 1972 to August 26, 1972, work schedule as he had done the previous month and if John Matlock had bid the day shift anyway the complainant George Luddington could have bid the double premium 4 P.M. to midnight, Sunday through Thursday shift. This would have given the complainant the Sunday premium in addition to the night premium which he was able to bid anyway.
10. The Complainant's position is that the supervisor Barton knew that Matlock would bid the day shift and took the Sunday 4 P.M. to Midnight off the night shift and put it with another dayshift in order to deprive Luddington of the Sunday premium pay. This is the alleged act of discrimination which is the basis of the complaint.
11. The Supervisor Mr. Chuck Barton testified that he split the schedule in the manner he did on the July 30, 1972 to August 26, 1972, schedule in order to more equally distribute the premium pay among the five men in the group. This arrangement meant that there were four shifts available which included premium pay equal to 20%. If a 4 P.M. to midnight, Sunday through Thursday shift were offered on this work schedule there would have been one shift that offered 20% premium and two additional shifts which offered 10% premium pay.
12. The scheduling technique of offering a Sunday 4 P.M. to 12 midnight along with four day shifts in one weekly schedule was used only during August and September of 1972 and is not a practice which is commonly used by the Respondent's supervisors. The only other time the supervisor Barton could remember using this technique was for one week on the schedule January 13, 1973 to February 10th, 1973 to May 5th, 1973 schedule (Complainant's exhibit 6).
13. There is no direct evidence that the supervisor Barton or any other agent or employee of the respondent acted with an intention to discriminate against the complainant on account of his race.
14. The effect of the supervisor decision to not offer the 4 P.M. to 12 midnight Sunday through Thursday shift was to deprive the complainant Luddington the

only black in the work group, of the 10% premium pay for Sunday and make that premium available to a white switchman.

CONCLUSIONS OF LAW

1. The Complainant has not shown by a preponderance of the evidence that the supervisor Barton or any other agent or employee of the respondent intended to discrimination against him on the basis of race.
2. The effect of the supervisor Barton's action in splitting the premium time was to make the Sunday premium available to a white switchman at the expense of the Complainant Luddington, a black. Since the splitting of premium time is not a common practice, the discriminatory effect renders its usage in this case a discriminatory act contrary to the Indiana Civil rights Act. Accordingly, the respondent is guilty of a discriminatory act.

RECOMMENDED ORDER

The hearing officer respectfully recommends that the Indiana Civil Rights Commission order the respondent Indiana Bell Telephone Company, Inc. to pay the Complainant actual damages equal to 10% of the Complainants weekly pay for the weeks commencing July 2, July 16, July 23, July 30, August 6, August 13, and August 20, 1972, plus interest at the legal rate from September 1, 1972, until paid.

Dated: January 9, 1976

Reversed: Indiana Bell Telephone Company, Incorporated v. Boyd, 421 N.E. 2d 660 (Ind App. 1981).